

Case No. 2572/98

(2)

XII-189 / (Jail)
C. J. P. R. 11/94/2,000



High Court of Madhya
JABALPUR.

27 OCT 1998

APPEAL OF PRISONER

Reg. No. 219

Receipt Clerk

No. 8941 Name उमेश्वर राम
Father's name मधुसूदन केशव साकिन जेवरम थाना परमगढ़
Residence जिला बिलासपुर 1 मठ प्र 01 Age 35 साल
Sentenced to आजीवन कारावास 10-1-000 On 29/09/98
Under section 302 भा 0 द 0 वि 0 by माननीय न्यायालय, माननीय अपर सत्र न्यायाधीश
जैजपुर जिला बिलासपुर 1 मठ प्र 01

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

- 1 Date of Application for copy of Judgement
- 2 Date on which copy received 24/10/98
- 3 Date on which Appeal sent 23/10/98
- 4 Whether the prisoner wishes to be represented or not - Yes / No

No. 8941 Name उमेश्वर राम आत्मज मधुसूदन केशव
Received in केन्द्रीय Jail रायपुर 1 मठ प्र 01
No. 325 दि 0 4/98 Dated 23/10/1998

Forwarded to the CHIEF JUDICIAL MAGISTRATE माननीय अतिरिक्त प्रजीयक महोदय,
माननीय उच्च न्यायालय मठ प्र 0 जबलपुर।
together with a copy of judgement or order passed in the case for favour of trans-
mission to the proper Appellate Court.

संलग्न: - सत्र प्रकरण क्रमांक-25/97 की
सत्यापित प्रति।

Superintendent
Jail

Date of receipt in office
Date of receipt record to accompany the
Memo of Appeal to the Appellate court

No Dated 199
Forwarded to the
Date of receipt in Appellate Court

(P. T. O.)

मामला क्रमांक Cr..A..2572/98 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>Division Bench:</u> <u>Hon. Shri L.C. Bhadoo &</u> <u>Hon. Shri Dhirendra Mishra, JJ</u> <u>21.2.2007:</u> Shri R.K. Jain counsel for the accused/appellant. Shri M.P.S. Bhatia panel lawyer for the respondent/State. The accused/appellant is in detention since 16.12.1996. Vide order dated 13.4.2004 he was directed to be released on bail but since he could not furnish the bail bond, he is still in detention. Therefore, with the consent of the counsel appearing for respective parties the appeal is heard finally. <u>(ORAL JUDGMENT DICTATED ON DAIS)</u> <u>L.C. Bhadoo, J:</u> 2. This appeal is directed against the judgment of conviction and order of sentence dated 29.9.1998 passed by Additional Sessions Judge, Janjgir in Sessions Trial No. 25/1997 whereby the accused/appellant has been held guilty under Section 302 of the IPC for committing the murder of his wife namely Bhuri Bai alias Durpatibai and sentenced ^{to} ~~to~~ undergo imprisonment for life and pay fine of Rs. 1000/-, in default of payment of fine to further undergo RI for six months. 3. Case of the prosecution is that on 15.12.1996 one Nammuram Kewat lodged a report in police station Pamgarh to the effect that on that day at about 9 a.m. Darasmati Bai Yadav informed him that his cousin (<i>Mouserai Bhai</i>) Umendram Kewat has committed the murder of his wife Bhuri Bai alias	

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मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Durpati Bai. On receiving this information, he along with one Amritdas went to the house of the accused and saw that Bhuri Bai alias Durpatibai, wife of the accused, was lying dead in a room and blood was spreading nearby. On inquiry as to with which weapon he has attacked Bhuri Bai alias Durpati Bai, accused/appellant told him that he attacked her with an iron weight. On receiving this report, the Station House Officer registered the FIR Ex. P-2 for commission of the offence under section 302 of the IPC. Merg intimation Ex. P-3 was given by Nammuram Kewat. Thereafter, Investigating Officer left for the scene of occurrence, prepared site plan Ex. P-4 and after giving notice Ex. P-5 to the Panchas he conducted inquest on the dead body of Bhuri Bai alias Durpati Bai and prepared inquest report Ex. P-6. While in police custody accused gave memorandum Ex. P-7 regarding the place where he had kept the iron weight of 10 kg. and in pursuance thereof iron weight and the lungi of the accused were taken into possession under Ex. P-8. Blood stained and plain soil was taken into possession under Ex. P-9. Vest (Sandow Baniyan) of the accused stained with blood was taken into possession under Ex. P-10. Revenue Inspector prepared site plan Ex. P-11. Thereafter, body of Bhuri Bai alias Durpatibai was sent for post mortem examination to Primary Health Centre, Pamgarh under Ex. P-12 where Dr. D.C. Chaudhary (PW-6) conducted the post mortem examination on the body of Bhuri Bai alias Durpatibai and submitted the post mortem report Ex. P-13. The doctor who conducted the post mortem examination opined that cause of death of the deceased is shock on account of severe haemorrhage, head injury and multiple bone fracture and the death was homicidal in nature. The recovered articles were sent for chemical examination to Forensic Science Laboratory, Sagar from where report Ex. P-20 was received. Serologist's	

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मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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	report Ex. P-22 was also received. After completion of the investigation charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Janjgir who in turn committed the case to the Court of Sessions Judge, Bilaspur, from where learned Additional Sessions Judge, Janjgir received the same on transfer for trial. 4. Prosecution in order to establish the charge against the accused/appellant has examined in all 10 witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution case and pleaded his innocence and false implication in the case. 5. After hearing counsel for the respective parties the trial Court has convicted and sentenced the accused/appellant as mentioned above. 6. We have heard Shri R.K. Jain counsel for the accused/appellant and Shri M.P.S. Bhatia learned Panel Lawyer appearing for the respondent/State and perused the record of the trial Court. 7. Counsel for the accused/appellant has not disputed the fact that the death of Bhuri Bai alias Durpati bai was homicidal in nature. Moreover, Dr. D.C. Choudhary (PW-6) who conducted the post mortem examination on the body of Bhuri Bai alias Durpati Bai has stated in his evidence that there was a crush injury on the left side of her face in the size of 8 x 5 inch, frontal bone, maxillary bone, nasal bone, mandible bone and the socket of the eyeball was fractured which was extending upto left ear, there was injury on	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	the right eye also. Right side central incisor tooth was dislocated and the cause of death was shock as a result of haemorrhage and head injury and death was homicidal in nature. Thus, it is established that the death of Bhuri Bai alias Durpati Bai was homicidal in nature. 8. As far as the involvement of the accused/appellant in the crime in question is concerned, there is no direct or ocular evidence against the present appellant and the case of the prosecution rests on circumstantial evidence only. The circumstances leading to the involvement of the accused/appellant are as under: (i) just before the death accused and the deceased were together in the house; (ii) accused/appellant made extra judicial confession; (iii) weapon of offence i.e. iron weight of 10 kg, was recovered at the instance of the accused and lungi of the accused and the iron weight were found stained with human blood. 9. <u>First circumstance</u>: PW-1 Sahodra Bai, mother of the accused/appellant has stated that Bhuri Bai alias Durpati Bai was her daughter-in-law and accused is her son. There were seven children out of the wedlock of the deceased and the accused. Accused used to harass and beat Bhuri Bai who on account of fear had gone to her parents' house two months before the incident and stayed there for a period of two months. 8 days prior to the incident, brother of Bhuri Bai came and left Bhuri Bai at her in-law's house. Bhuri Bai stayed with her for two nights as she was scared of the accused that he would beat her. She used to sleep with her only.	

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मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Thereafter, accused gave assurance to her that he would not beat Bhuri Bai and thus took his wife in his room. In the morning hours Bhuri Bai used to do the household chorus and thereafter she did not see Bhuri Bai. In the morning children went to watch TV and she went to Rautpara to collect money in lieu of milk and when she returned, she again saw that Bhuri Bai was cooking food but at that time accused was not there. She has further stated that when she was going to collect money she saw Bhuri Bai cooking food but when she returned she did not see either her son or Bhuri Bai. She thereafter called her son and the daughter-in-law and when she went near the door of the room, door was closed, ~~and~~ when she went inside pushing open the door, she saw that her daughter-in-law was lying dead and there were injuries on her face. Thereafter, she came out and started raising cries. 10. PW-3 Nammuram has stated that on the fateful day at about 9 a.m. when he came after watching TV, one Darasmati Yadav informed him that his cousin (<i>Mouserai Bhai</i>) i.e. the accused, has committed murder of his wife Bhuri Bai. Thereafter, he along with Amritdas went to the house of Umendram and saw that Bhuri Bai was lying dead in a room and blood was spreading nearby. In paragraph 4, he has stated that on inquiry by the villagers, the accused stated that he has committed the murder of his wife with iron weight. PW-7 Dina Dhobi has stated that on the fateful day at about 9 a.m. mother of the accused Sauhadra Bai raised cries that Umendram has committed the murder of his wife, on which they went to the house of Umendram and saw that Bhuri Bai was lying dead and an iron weight of 10 kg was also lying there. PW-8 Mokhelal has stated that mother of Umendram was crying on which he went there and inquired as to who has committed	

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मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक सन् आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	murder, on which she replied that Umendram has committed murder. They went to the house of Umendram and saw that his wife Bhuri Bai was lying dead. There were injuries on her head and face. In cross examination by A.G.P. he stated that Bhuri Bai was lying dead in a pool of blood and the people came there. At that time, accused was standing in the courtyard and there was blood on his vest (Baniyan). Mother of Umendram informed that accused was in the <i>Patav</i> and when she called him, he came down. Therefore, in view of above evidence it is established that Bhuri Bai was murdered in the house of the accused/appellant where her dead body was found. In the previous night, the accused took Bhuri Bai in his room after assuring his mother that he would not beat her and the next day morning she was found dead in a room. PW-8 Mokhelal has stated that accused was standing in the courtyard and there was blood on his vest (Baniyan). Even the villagers were collected at the place and on inquiry, the accused disclosed that he has committed murder of his wife by attacking with iron weight. Therefore, presence of the accused in the house at the time of commission of crime is also established. The accused has not come forward with any explanation regarding the circumstance under which his wife was murdered. He has simply pleaded his innocence and stated that he has not committed the murder of his wife. When the body of the deceased was found in the room of the accused, that fact was within the special knowledge of the accused, therefore, as per requirement of Section 106 of the Evidence Act it was the duty of the accused to explain the circumstance under which Bhuri Bai, wife of the accused sustained injuries and she was murdered. He has failed to discharge the burden, therefore, this is an additional circumstance against the accused connecting him with the crime in question. PW-4	

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मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Kalasram has also stated that the accused was in his house and his vest (Sandow Baniyan) was stained with blood. 11. <u>Second circumstance:</u> PW-3 Nammuram has stated that on inquiry the accused has confessed before the villagers that he has attacked his wife with iron weight and this witness has not been cross-examined on this aspect. Therefore, as per the evidence of PW-3 Nammuram it is established that the accused made extra judicial confession before the villagers that he assaulted his wife an with iron weight. 12. <u>Third circumstance:</u> Vest (Sandow Baniyan) and lungi of the accused were taken into possession under Ex. P-10 and Ex. P-8 respectively, which were sent for chemical examination to the Forensic Science Laboratory, Sagar and as per Ex. P-20 Lungi and Baniyan were found stained with blood. Even the iron weight recovered from the place of incident was also found stained with blood. As per the serologist's report on the iron weight and lungi of the accused there was human blood and the same has not been explained by the accused as to how his cloths were stained with blood, therefore, this circumstance also connects the accused with the crime in question. Therefore, the above circumstances, if put together, conclusively establish the involvement of the accused/appellant in the crime in question and based on that irresistible conclusion can be drawn that accused was author of the crime in question. The manner in which the accused attacked the deceased with an iron weight of 10 kg as a result of which frontal bone and maxillary bones were crushed and Bhuri Bai died spontaneously, the intention of the accused to cause death of Bhuri Bai is writ large.	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CR.A.No.2572/98 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	13. In the result, we do not find any illegality or infirmity in the judgment of trial Court which requires interference from this Court. Accordingly, the appeal being devoid of substance is liable to be dismissed. It is accordingly dismissed. Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge